SUPREME COURT OF THE UNITED STATES.

No. 251.

THOMAS J. FROW, APPELLANT,

vs.

TOMAS DE LA VEGA.

CERTIORARI AND RETURN.

FILED JULY 19, 1872.

1 To the honorable the associate justices of the Supreme Court of the United States, at Washington, D. C.

The answer of Matthew Hopkins, clerk of the circuit court of the United States, 5th circuit, in and for the western district of Texas, at Austin, in said district, to the writ of certiorari, directed to the judges of the said court, on suggestion of the diminution of the record made by one of the solicitors of the appellee in the case of Thomas J. Frow, appellant, vs. Tomas de la Vega, appellee, now in the Supreme Court of the United States, No. 251 on the docket of said Sup. Court.

The clerk of the court, answering, says that he has carefully compared the printed copy of the record in the case 251, above referred to, with the records of the case of Tomas de la Vega vs. John W. Lapsley, Thomas J. Frow, and others, No. 37, chancery, in this court, (in which cause Thomas J. Frow was one of the defendants, and appealed from a final decree entered on a pro confesso, made final as to said Frow, and final decree entered as to him, the said Frow, while the suit as to the other defendants remained unadjudicated and pending,) and he can discover no plea, order, record, or paper which is material to the issue upon the appeal before the Supreme Court of the United States, and which is not in the record now in said court.

2 The clerk, answering, says the writ of certiorari in this case is general; it does not point out or suggest any error or omission or the diminution complained of i. e. specially. The record of this case, and generally of every case, is made up under the instruction of the solicitor of appellant, and no responsibility (as the clerk verily believes) rests upon him other than that he shall take due care that the certificate which he attaches to the record shall not mislead the court, and that it shall be full and true as to the contents of the record.

The clerk of the court, answering, says that the record in the case of Tho's J. Frow vs. Tomas de la Vega, No. 251, on appeal from this court, in which the diminution is suggested, contained two hundred and four written pages, of three folios to the page; that Simon Mussina, one of the solicitors of record of the complainant in case No. 37, chancery, entitled Tomas de la Vega vs. John W. Lapsley, Thomas J. Frow, and others, on *on* whose affidavit the certiorari was granted, has in his possession or control bound volumes, eleven or twelve in number, under the certificate and seal of this court, of every paper filed or order or record made in said cause, down to the final judgment or decree against

3 Thomas J. Frow, and inclusive of the bond and appeal of said Frow; that, accompanying this answer, and annexed hereto as part thereof, is a copy of the index to that record, Exhibit "A," numbering 4,434 pages, written, at request of said Mussina, on alternate lines, and equal to two thousand two hundred pages, of three folios to the page, containing all the proceedings as to all of the fourteen defendants down to the appeal of Thomas J. Frow.

Formal notice has been given by the clerk to both the solicitors of complainant and of defendant Frow, that, before the clerk can be held responsible for the failure to comply literally with the order contained in the certiorari, to transmit a full record of the whole case, that a deposit to cover the costs of making the record must be made by the party whose interests were involved, or the record would not accompany the answer to the writ. No deposit, or promise to deposit, has been made.

The clerk, answering, says that, subsequent to the appeal of Thomas J. Frow from the final decree made as to him, the Hon. W. B. Woods,

circuit judge, in open court, set aside said decree as a nullity, and permitted the said Frow to answer on terms, (Exhibit B,) copies of which order is attached to this answer, and prayed to be made part of the same; that, after issue joined with all of the defendants in the
4 case, *that* a decree (Exhibit C) was entered against the complainant, Tomas de la Vega, and in favor of all of the defendants in said cause, inclusive of the said Thomas J. Frow, from which decree the complainant in the cause has filed his petition and bond for appeal, as well from the decree in favor of the said Frow as the other defendants, duly allowed and approved, (Exhibits D & E,) copies of which appeal and bond are attached hereto, and prayed to be made part of this answer.

All of which is respectfully submitted to the consideration and indulgence of the court.

MATTHEW HOPKINS,
Clerk U. S. Circuit Court, Austin, Texas.

Sworn to and subscribed before me this 8th day of July, A. D. 1872.
T. H. DUVAL, *U. S. Judge.*

5 EXHIBIT "A."

TOMAS DE LA VEGA
vs.
JOHN W. LAPSLEY, THO'S J. FROW, ET ALS. } No. 37. Chancery.

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61 *a* 62	Entry rule or order book of filing bill & exhibits		Ap'l 6, 1868
62 *a* 63	Motion of complainant for special injunction	" 7, "	
64	Order to clerk to give notice of application for injunction	" " "	7 "
65 *a* ¼	Subpœna to John W. Lapsley & others issued	8, "	" "
66 *a* ¼	" " Westley Plattenburg & return "	" "	" "
67 *a* ¼	" " Thomas J. Frow & " "	" "	" "
68 *a* ¼	" " Thomas Harrison & " "	" "	" "
69 *a* ¼	" " James Harrison " "	" "	" "
70 *a* ¼	" " E. J. Gurley " "	" "	" "
71 *a* ¼	" " R. N. Goode " "	" "	" "
72 *a* ¼	" " J. M. Norris " "	" "	" "
73 *a* ¼	" " J. L. L. McCall " "	" "	" "
74 *a* ¼	" " S. H. Renick " "	" "	" "
75 *a* ¼	" " J. B. Earle " "	" "	" "
76 *a* ¼	" " Edward Kellum " "	" "	" "
77 *a* ¼	" " W. R. Kellum " "	" "	" "
78 *a* ¼	" " Hon. Jno. C. Watrous " "	" "	" "
79	App't Erath Johnson, dep't marshal, to save his oath of office.	" "	" "
80 *a* 82	Entry appearance of R. N. Goode, def't		May 20, 1868
83 *a* 86	Motion of R. N. Goode to take testimony		" " "
87 *a* 119	Answer of R. N. Goode	May 20, 1868	
119 *a* 131	Motion of R. N. Goode to take testimony		
132 *a* 143	Appearance and answer of S. H. Renick	29, "	" " "
144	Appearance of E. J. Gurley & James E. Harrison, J. M. Norris, W. R. Kellum, Westly Plattenburg, Tho's J. Frow, Thomas Harrison, J. B. Earle, J. L. L. McCall, & Jno. C. Watrous.		June 1, 1860
145	Motion for extension of time to answer	June 17, '68	" 18, "
147 *a* 150	Affidavit of T. J. League accompanying motion for extension of time.	" " "	" " "
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150	Entering order granting motion for extension of time		June 19, 1868
150	Entering appearance of John W. Lapsley		" "
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174 *a* 176	Motion for pro confesso against Renick, R. N. Goode, and W. R. Kellum	July 30 , '68	" " "
177	Sundry orders		July 6, 1868
178 *a* 186	Exceptions of complainant to answer of Kellum	July 11, '68	
187 *a* 188	Replication to answer of R. N. Goode	" " "	
189 *a* 196	Exceptions to answer of Renick	" " "	
197 *a* 198	Order referring exceptions to master & to compell discovery.	July 16, "	July 16, "

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198	Order on motion to amend as to Norris	July 18,	" 18, "
199 199½	Motion to extend time to answer		
200 a 206	Affidavit of T. J. League accompanying motion to extend time.		
207 a 245	Answer of Jno. B. Earle	July 29, '68	" 29, 1868
246 a 256	Master's report on exceptions to answer Renick	July 31, "	" 31, "
257 a 270	Report of master on answer & exceptions to def't Kellum.	" "	" " "
271 a 301	Answer of Thomas Harrison	Aug. 1	
302 a 306	Motion to strike from files answer of Jno B. Earle	" "	" " "
307	Entry rules of filing exceptions to answer of J. B. Earle	" "	" " "
308 a 326	Exceptions to answer of Jno. B. Earle	" "	" " "
327	Pro confesso as to McCall & Norris	" 3	Aug. 3, "
328 a 346	Exceptions to answer of Tho's Harrison	" 3	" " "
347	Motion to refer exceptions to master	" "	Aug. 3, "
348 a 349	Order overruling motion to strike out answer of Earle	" 3	" 3, "
350	Order referr'g exceptions to answer of Tho's Harrison	" 3	" 3, "
351 a 352	Order in reference to report of master as to Kellum	" 4	" 4, "
353 a 354	Order extending time to answer to Frow, Plattenburg, Lapsley, &c.		Aug. 4, 1868
355	Pro confesso as to J. E. Harrison & E. J. Gurley	Aug. 8, 1868	Aug. 8, "
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356 a 357	Amended exceptions to answer of Jno. B. Earle	Aug. 8, 1868	Aug. 8, "
358 a 359	" " " " Tho's Harrison	" " "	" " "
360 a 372	Master's report on answer of Tho's Harrison	" " "	" " "
373 a 387	" " " " J. B. Earle	" " "	" " "
388	Motion to set aside pro confesso as to McCall & Norris	Sept. 5, '68	Sept. 5 "
389 a 390	Affidavit of N. G. Shelly as to previous motion	" " "	" " "
391 a 393	Affidavit of E. J. Gurley for J. E. Harrison	" " "	" " "
494 a 396	" " " W. P. de Normandie	" " "	" " "
397	Motion of Gurley & Harrison to set aside, pro confesso	" " "	" " "
398 a 401	Affidavit of E. J. Gurley	" " "	" " "
402 a 404	" " of W. P. de Normandie in relation to answer	" " "	" " "
405 a 442	Answer of Jno. C. Watrous & entry rules	" " "	" " "
443 a 480	" " " W. R. Kellum	" " "	" " "
481	Motion of complainant to take answer of Watrous, from files	Sept. 7 "	" 7, "
482	Pro confesso against Renick, Frow, & Plattenburg	" " "	" "
483	" " " Jno. W. Lapsley	" " "	" "
484 a 485	Motion of Jno. W. Lapsley to set aside, pro confesso	" " "	" "
486 a 488	Affidavit of de Normandie in support of	" " "	" "
489	Order setting aside pro confesso against Lapsley, J. E. Harrison, Gurley, McCall, & Norris.	Sept. 11 '68	Sept. 11, 1868
490	Order on motion of compl't to take Lapsley's answer from files.	" " "	" " "
491 a 522	Answer of James E. Harrison	Sept. 12	" 12, "
523 a 587	" " E. J. Gurley	" "	" " "
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840 a 869	" " J. M. Norris	" "	" " "
870 a 903	" " J. L. L. McCall	Sept. 12, '68	" " "
904 a 905	Motion to serve sol. of compl't with notice of x-bill	Sept. 15, '68	" " "
96 a 907	Affidavit of W. P. de Normandie in support of	" " "	" " "
908	Notice to W'm Alexander, sol. for comp't	" 15, "	" " "
909 a 910	Motion of def't Lapsley to withdraw his answer to same	Oct. 5	Oct. 5, "
911	Motion to refer exceptions to answer of Lapsley	" "	Oct. 5, "
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912 a 913	Motion of compl't to take x-bill of Lapsley from files	Oct. 5, 1868	Oct. 5, 1868
914 a 915	" " " to extend time to file exceptions	Oct. 5, "	" " "
916	" " " to refer exceptions to & answers of Watrous & Gurley.	" " "	" " "
916 a 917	Order extending time to compl't to file exceptions	Oct. 6, "	" " "
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1214 a 1354	" " " " E. J. Gurley	" " "	" " "
1355 a 1473	" " " " J. C. Watrous	" " "	" " "
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1508 a 1511	" at rules, taking bill pro confesso as to Lapsley	Nov. 2, 1868	Nov. 2, 1868
1512 a 1520	Complainant's notice to defendants	Nov. 2, 1868	" " 1868
1521 a 1522	Compl't's notice to def'ts of filing papers	Nov. 2, "	" " "
1523 a 1526	Compl't's motion to make pro confesso absolute as to Lapsley.	" " "	" " "
1527 a 1528	Compl't's motion to make pro confesso absolute as to Frow, Plattenburg, & Renick.	" " "	" " "
1529 a 1659	Exceptions to 2d answer of Jno. B. Earle	" " "	" " "
1660 a 1750	Exception to " answer of J. L. L. McCall	" " "	" " "
1751 a 1839	Exception to " answer of J. E. Harrison	" " "	" " "
1840 a 1923	Exceptions to " answer of Tho's Harrison	" " "	" " "
1924 a 1993	Exceptions to " answer of W. R. Kellum	" " "	" " "
1594 a 2087	Exceptions to " answer of J. M. Norris	" " "	" " "
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2089 a 2096	Affidavit of Westley Plattenburg in support of motion	" " "	" " "

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2097 *a* 2099	Notice of R. N. Goode, def't, of filing deeds, &c.	Nov. 7, "	" " "
2100 *a* 2104	Deed from J. Dunn, sen'r, to J. Dunn, j'r.	" " "	" " "
2105 *a* 2110	" " J. Dunn to David H. Love.	" " "	" " "
2111 *a* 2116	" " D. H. Love to T. H. Barron.	" " "	" " "
2117 *a* 2121	" " D. H. Love to T. F. Morgan.	" " "	" " "
2122 *a* 2125	Power of att'y from D. H. Love to R. N. Goode.		
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2126 *a* 2130	Deed from Tho's F. Morgan to R. N. Goode.	Nov. 7, 1868	
2131 *a* 2135	" " " " " R. N. Goode.	" " "	
2136 *a* 2140	" " Tho's Barron to R. N. Goode, date Aug. 30, 1860.	" " "	
2141 *a* 2148	" " J. L. Howe to R. N. Goode, date Aug. 31, 1860.	" " "	
2149	Memorandum of clerk in relation to mortgage	" " "	
2150 *a* 2151	Cancellation of mortgage from Howe to Goode	" " "	
2152 *a* 2158	Deed, B. D. Arnold to R. N. Goode	" " "	
2159 *a* 2163	" from Tomas de la Vega to Elephus Spencer	" " "	
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2170 *a* 2176	" " " " " adm'r, to R. N. Goode	" " "	
2177 *a* 2191	A certified copy of final judg't & decree in case No. 1093, John W. Lapsley vs. McPhaul, Tipton, Goode, & others.	" " "	
2192 *a* 2195	Field-notes of survey of 733 acres for N. R. Goode, pursuant to settlement of conflict, Dillard & La Vega tiles.		
2196 *a* 2210	Master's report on answers & exceptions to Jno. C. Watrous.	Nov. 10, 1868	
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2242 *a* 2255	" " " " " " John W. Lapsley.	Nov. 10, "	
2256 *a* 2261	Supplemental report of master on exceptions to answer of John W. Lapsley.	" " "	
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2282 *a* 2286	Notice to S. H. Renick, def't, as to costs of master issued.	Nov. 10, "	
2287	Order of court on motion to make pro confesso as to Lapsley, Frow, Plattenburg, & Renick, absolute.	Dec. 7, 1868	Dec. 7, 1868
2288 *a* 2299	Motion of Lapsley to set aside pro confesso as to him of Nov. rules.	" " "	" " "
2300 2302	Motion of Westley Plattenburg to postpone consideration of motion to aside pro confesso.	" " "	" " "
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2433 *a* 2506	Further answer of Ja's M. Norris	" " "	" " "
2507 *a* 2575	" " " J. L. L. McCall	" " "	" " "
2576 *a* 2642	" " " Thomas Harrison	" " "	" " "
2643 *a* 2746	" " " James E. Harrison	" " "	" " "
2747 *a* 2757	Supplemental & amended further answers of Tho's Harrison.	" " "	" " "
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2763 *a* 2765	" " Thomas J. Frow to postpone consideration of motion.	" " "	" " "
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2769 *a* 2771	Motion for attachment, &c., by compl't.	" " "	" " "
2772	Motion of complainant for decree against Lapsley, Frow, Plattenburg, Renick, & Watrous.	" " "	" " "
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2791 *a* 2814	" " Jno. W. Lapsley to " " " "	" " "	
2815 *a* 2816	Compl't's exceptions to report of master on 2 answer of Kellum.	" " "	
2817 *a* 2825	Exceptions of E. J. Gurley to " " on his answer.	Dec. 10, "	
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2962 *a* 2966	" " Tho's J. Frow	" 11 "	
2967 *a* 2971	" " Westley Plattenburg in support of.	" "	" " "
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3000 *a* 3002	Motion of comp't to strike from files answer of W. R. Kellum.	Feb. 24, 1869	Feb. 24, 1869.
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3197	Entry rules, of filing exceptions to answer of Lapsley	" " "	" 16, "
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4221 *a* 4226	Motion of compl't for attachment against J. M. Norris	" " "	" " "
4227 *a* 4229	Exceptions of compl't to master's report on 2d ans. of Jno. W. Lapsley.	" 8, "	" " "
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4233 *a* 4234	" " " " J. E. Harrison	" 17, "	
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4244	Motion of def'ts to suspend order as to master's costs	Aug. 16, "	
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4316 *a* 4318	Order of court on reference for insufficiency of answer to master.		Feb. 7, "
4318	Order of court on def'ts' exceptions to master's rep't on Lapsley's answer.		Feb. 14, "
4319 *a* 4322	Order of court on motion to strike from files Kellum's last answer.		" " "
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4337 *a* 3339	Ex. 2, (affidavit of T. J. Frow " " " "	" "	
4340 *a* 4342	Ex. 3, (affidavit of W. M. Walter)	" "	

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4365 a 4369	Affidavit of Tho's J. Frow, endorsed, filed nunc pro tunc, by order of court, as of Feb. 16, 1870.	" "	
4370 4372	Motion of def't Lapsley to revise and amend order of court.	Feb. 17, "	
4373 a 4376	Motion of def't Lapsley to set aside order of Ap'l 7, '69	" " "	
4377 a 4382	Motion of Tho's & James E. Harrison to set aside reference of exceptions.	" " "	
4383 a 4388	Motion of Norris & McCall " " " &c	" " "	
4389	Motion of def'ts Norris, McCall, Tho's & J. E. Harrison to remove from the files new exceptions.	" " "	
4390 a 4392	Motion of compl't to refer to master answer of Kellum	March 5, '70	March 5, '70.
4393	Order of court on motion of Lapsley to revise & amend		Mar. 18, 1870.
4394	Order of court for draft of decree against Tho's J. Frow		Mar. 18, 1870.
4395	Motion of compl't for decree against Frow	Mar. 21, '70	" 21, "
4396 a 4404	Order of court on motions of comp't of Feb. 14, '70		" 18, "
4405	Motion of comp't to set aside order 18 M'ch	March 21, '70	" 21
4406 a 4407	Resubmission of compl'ts motions, &c	" " "	
4408 a 4409	Motion of compla'nt as to def't Norris	" " "	" " "
4410 a 4411	Motion of compl't as to Plattenburg	" " "	" " "
4412 a 4418	Motion of compl't to set aside order of 18 M'ch	" " "	" " "
4419	Motion of compl't to set aside order of 18th March, on the motion of Lapsley to revize & amend	Mar. 21, '70	Mar. 21, '70.
4420 a 4427	Motion giving grounds in opposition to decree against Frow, and for rehearing, &c.		
4428	Order refusing rehearing as to def't Frow, & order to enter decree.	" " "	Mar. 21, '70.
14			
4429 a 4430	Decree and notice of appeal	March 23, '70	Mar. 23, '70.
4431 a 4432	Petition for allowance of appeal	" 28, '70	" 28, '70.
4433 a 4434	Bond for appeal	" 28, '70	

True copy from original index.

M. HOPKINS, *Clerk.*

15 EXHIBIT B.

Circuit court of the United States in and for the western district of Texas, sitting in chancery, at Austin, January 30, 1871.

TOMAS DE LA VEGA, COMPL'T, *vs.* JOHN W. LAPSLEY ET ALS., DEF'TS. } In chancery. No. 37.

The motion of the def't Thomas J. Frow to set aside the final decree entered against him in this court on the 23d March, A. D. 1870, and to set aside the judgment, pro confesso, entered against him at September rules, 1868, and for leave to file his answer to the bill of complaint, coming on to be heard, and, the court being advised in the premises, doth grant said motion, and here orders that the said final decree and the said judgment pro confesso be, and the same are hereby, set aside.

And it is further ordered by the court that the defendant be, and he is hereby, required to file his answer to the bill of complaint instanter, and that he pay therefore fifty dollars, costs of suit herein.

W. B. WOODS, *Judge.*

BETWEEN TOMAS DE LA VEGA, COMPL'T, *and* JOHN W. LAPSLEY & OTHERS, DEF'TS. } In chancery. No. 37.

On consideration of the motion of the complainant to strike from the files the motion of Tho's J. Frow to set aside, &c., and the motion of def't Frow to file an answer instanter, which has been granted, it is ordered by the court that said motion of complainant to strike
16 from the files, &c., be, and the same is hereby, overruled, and that this entry be made in order to show that the complainant has reserved the benefit of said motion.

EXHIBIT "C."

In the United States circuit court, western district of Texas, at Austin.
June term, A. D. 1871. November 6th, A. D. 1871.

TOMAS DE LA VEGA, COMPLAINANT, *vs.* JOHN W. LAPSLEY, WESTLY PLATTENBURG, Thomas J. Frow, Thomas Harrison, James E. Harrison, E. J. Gurley, R. N. Goode, J. M. Norris, J. L. L. McCall, S. H. Renick, J. B. Earl, Edward Kellum, and John C. Watrous, original defendants, and Thomas Harrison, adm'r of estate of J. B. Earle's *estate*, W. R. Kellum, adm'r of the estate of Edward Kellum, defendants. } In chancery. No. 38.

This cause came on to be heard at this term of the court, and was argued by counsel, and; thereupon, upon consideration thereof, it was ordered and adjudged and decreed as follows, viz:

It is here and now ordered, adjudged, and decreed by the court in this cause that the complainant's bill of complaint be, and the same is hereby, dismissed, at the costs of him, the said complainant, Tomas de la Vega.

And it is further ordered, adjudged, and decreed by the court that the defendants John W. Lapsley, Westly Plattenburg, Thomas J. Frow,
Thomas Harrison, for himself and as administrator of the estate
17 of J. B. Earl, James E. Harrison, E. J. Gurley, R. N. Goode, J. M. Norris, J. L. L. McCall, S. H. Renick, W. R. Kellum, for himself and as administrator of the estate of Edward Kellum, and John C. Watrous, each in his separate right and on his own behalf, do have and recover of and from the complainant, Tomas de la Vega, all the costs in this cause by them expended, for which execution may issue, according to the law of the case and the practice of this court.

And it is further ordered, adjudged, and decreed by the court that the defendants above named, and each of them individually, and in their respective capacities as charged, go hence without day.

Nov. 6th, 1871.

T. H. DUVAL, [SEAL.]
U. S. Judge.

EXHIBIT "D."

Petition for appeal is endorsed: "Filed Feb. 26, 1872. M. Hopkins cl'k." And is in words, to wit:

In the circuit court of U. S., west. dist. Texas, at Austin, January, 1872.

TOMAS DE LA VEGA, COMPLAINANT,
against
JOHN W. LAPSLEY, WESTLEY PLATTENBURG, Thomas J. Frow, Thomas Harrison, (for himself and as administrator of the estate of J. B. Earle,) James E. Harrison, E. J. Gurley, R. N. Goode, J. M. Norris, J. L. L. McCall, S. H. Renick, W. R. Kellum, (for himself and as administrator of the estate of Edward Kellum,) and John C. Watrous, defendants.

18 The complainant, Tomas de la Vega, against whom a judgment final was rendered at the June term, 1871, of the said court, and against whom a final decree was entered, prays for an appeal, notice thereof having been given in open court, from the judgment of the court, and from the final decree entered, to the end that the errors of the court preceding said decree, and in the rendition of said final judgment, and the entry of said final decree may be reversed and corrected, and the law of the case, and the equities between said complainant and said defendants may be awarded, and said complainant here tenders an appeal-bond for the approval of the judge, and citations to be signed and tested according to law.

ALEXANDER & MUSSINA,
Sol's for Compl't La Vega.

The appeal prayed for in the foregoing petition is hereby allowed.
T. H. DUVAL,
U. S. Judge.

EXHIBIT E.

Bond for appeal, filed at the same time, is endorsed: "Filed Feb. 26, 1872. M. Hopkins, cl'k."

Know all men by these presents that we, Tomas de la Vega, as principal, and Simon Mussina and John T. Allan as sureties, are held and firmly bound unto John W. Lapsley, Westley Plattenburg, Thomas
19 J. Frow, Thomas Harrison, (for himself and as administrator of the estate of J. B. Earle,) James E. Harrison, E. J. Gurley, R. N. Goode, J. M. Norris, J. L. L. McCall, S. H. Renick, W. R. Kellum, (for himself and as administrator of the estate of Edward Kellum,) and John C. Watrous, in the full and just sum of five hundred dollars, to be paid to the said John W. Lapsley, Westley Plattenburg, Thomas J. Frow, Thomas Harrison, (for himself and as administrator of the estate of J. B. Earle,) James E. Harrison, E. J. Gurley, R. N. Goode, J. M. Norris, J. L. L. McCall, S. H. Renick, W. R. Kellum, (for himself and as administrator of the estate of Edward Kellum,) and John C. Watrous, their certain attorneys, executors, administrators, or assigns; to which pay-

ment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents, sealed with our seals, and dated this twentieth day of January, in the year of our Lord one thousand eight hundred and seventy-two.

Whereas lately, at a term of the circuit court of the United States for the western district of Texas, began and held for the June term, A. D. 1871, in a suit depending in said court between Tomas de la Vega as complainant, and John W. Lapsley, Westley Plattenburg, Thomas J. Frow, Thomas Harrison, (for himself and as administrator of the estate of J. B. Earle,) James E. Harrison, E. J. Gurley, R. N. Goode, J. M. Norris, J. L. L. McCall, S. H. Renick, W. R. Kellum, (for himself and as administrator of the estate of Edward Kellum,) and John C. Watrous, defendants, a decree was rendered against the said Tomas de la Vega, the complainant therein; and the said Tomas de la Vega having obtained an appeal, and filed a copy thereof in the clerk's office of the said court to reverse the decree in the aforesaid suit, and a citation directed to the said John W. Lapsley, Westley Plattenburg, Thomas J. Frow, Thomas Harrison, (for himself and as administrator of the estate of J. B. Earle,) James E. Harrison, E. J. Gurley, R. N. Goode, J. M. Norris, J. L. L. McCall, S. H. Renick, W. R. Kellum, (for himself and as administrator of the estate of Edward Kellum,) and John C. Watrous, and their attorneys of record, Walton & de Normandie, Hancock, & West, & F. H. Sleeper, citing and admonishing them to be and appear at a Supreme Court of the United States to be holden at Washington the first Monday of December next:

Now, the condition of the above obligation is such, that if the said Tomas de la Vega shall prosecute his appeal to effect, and answer all damages and costs if he fails to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

TOMAS DE LA VEGA. [L. S.]
By SIMON MUSSINA,
His Att'y-in-fact & Solicitor.
SIMON MUSSINA. [L. S.]
JOHN T. ALLAN. [SEAL.]

The foregoing bond is hereby approved.

T. H. DUVAL,
U. S. Judge.

I, Matthew Hopkins, clerk of the circuit court of the United States in and for the western dist. of Texas, at Austin, do hereby certify that the foregoing and annexed six written pages contain a full and true copy of the orders of court, entered on the 30th day of January, A. D. 1871; the final decree, entered on the sixth day of November, A. D. 1871; the petition of complainant for appeal, and the bond for appeal, as they appear of file and record in case No. 37, chancery, entitled Tomas de la Vega vs. John W. Lapsley et al.

In test whereof I have hereto set my hand and seal of court at Austin this eighth day of July, A. D. 1872.

[SEAL.] M. HOPKINS, *Clerk.*

THE UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judges of [SEAL.] the circuit court of the United States for the western district of Texas, greeting:

Whereas in a certain suit in said circuit court between Thomas de la Vega, complainant, and John W. Lapsley, Westley Plattenburg, Thomas J. Frow, et al., defendants, which suit was removed to the Supreme Court of the United States by virtue of an appeal taken by Thomas J. Frow, agreeably to the act of Congress in such case made and provided, a diminution of the record and proceedings of said cause has been suggested.

You therefore are hereby commanded that, searching the records and proceedings in said cause, you certify a perfect transcript of the record
23 to the said Supreme Court of the United States, so that you have the same, together with this writ, before the said Supreme Court forthwith.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, the first Monday of December, A. D. 1871.

D. W. MIDDLETON,
Clerk Supreme Court U. S.

Issued.

24 (Indorsed:) 251. Sup. Court. Writ of certiorari filed & notice given to solicitors of def'ts this Dec'r 23d, 1871. M. Hopkins, clerk. Thomas J. Frow, appellant, vs. Tomas de la Vega, appellee.

(Indorsement on cover:) Supreme Court U. S., 1871. Dec. term. No. 251. Thomas J. Frow, app't, vs. Tomas de la Vega. Certiorari & return. Filed 19 July, 1872.

In the Supreme Court of U. S.

THOS. I. FROW
vs.
THOS. DE LA VEGA.

BRIEF OF P. PHILLIPS.

The bill in this case was filed by the appellee, De La Vega, on 6 April, 1868, against I. W. Lapsley and twelve other defendants, including Thos. I. Frow, the appellant in this case.

The bill is found at page 3, and seeks to set aside a purchase of the premises described, made by Lapsley in 1850, for his and his co-defendants' benefit. It describes the title thus acquired, as made in fraud of the complainant's rights under a Mexican title—all the defendants are charged with the same fraud, and the title is treated and described as held by the defendants jointly. Frow and Plattenberg, are described as citizens of Alabama, and as to them the complainant took in the clerk's office, at the rule day of September, 1868, a decree *pro confesso*, 17; a motion having been made to make this rule absolute. Frow showed cause, December, 1868, setting forth five grounds of objection. 18.

On 7 February, 1870, Judge Duval set aside the decree *pro confesso* as to Plattenberg, but refused to do so to Frow, because, "no motion was ever made to set it aside." 21.

At the January Term, 1870, Judge Duval entered the decree, making the *pro confesso* absolute as to Frow and decreeing "that the prayers of the bill be in all things granted as between the complainant and the said defendant, Frow," and perpetuating the injunction against him. p. 74.

From this decree the appeal is taken.

The appellant assigns for error, that this decree is erroneous and should be reversed.

There was no ground for granting the motion to make the rule absolute as to the decree *pro confesso*, and there was much less ground in proceeding still further in granting the prayer of the bill as to a single defendant—whose interests were united with those of the other defendants.

On the return to the *certiorari*, issued at the instance of the appellee, it appears that on the 30 January, 1871, Judge Woods set aside this decree and allowed Frow to file his answer, 6.

And on the 6 November, 1871, the cause coming on to be heard, Judge Duval entered up a decree in favor of all the defendants, including Frow for costs—and dismissing the bill of De La Vega, 7.

From this decree De La Vega has taken an appeal to this court.

In the Supreme Court of U. S.

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vs.
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From this decree De La Vega has taken an appeal to this court.

IN THE HONORABLE THE

Supreme Court of the United States.

December Term, 1871.

THOMAS J. FROW, APPELLANT,
vs.
TOMAS DE LA VEGA. } *No.* 251.

Brief of Counsel of Appellee.

This is an appeal from a decree of the United States circuit court of the western district of Texas.

On the 6th April, the complainant, Tomas de la Vega, filed his bill in equity against the appellant, Thomas J. Frow, and thirteen others.

Rec., p. 3.

The bill avers that on 4th October, 1833, De la Vega was invested, in accordance with law, by the proper authority of the then Mexican State of Coahuila and Texas, with a good title, as original grantee, and with the possession of a tract of land of eleven square leagues, on the Brazos river, in the now county of McLennan, in the State of Texas.

See Rec., p. 3.

That he has always continued to be seized and possessed of said land, and has never alienated the same.

Rec., p. 3.

That the defendants conceived the design of fraudulently depriving De la Vega of this land, by means of a forged *testimonio*.

See Rec., p. 4.

That in pursuance of their conspiracy to defraud him, the defendants, in Dallas county, Alabama, on the 9th July, 1850, did procure from one League, a defendant, a conveyance of the legal title to said land to the defendant, Lapsly, for the benefit of all of them, pretending that this fraudulent contrivance conveyed a good title in law, and that League had derived his title to the land from De la Vega.

See Rec., p. 4.

That the instrument aforesaid claimed to be the *testimonio* of a power of attorney from De la Vega to one Williams to sell the land, purported to be dated on the 25th day of May, 1832, was a forgery, and was well known to be such to the defendants, and was such as a matter of public notoriety by report No. 540 of the House of Representatives of the United States, 1st session, 35th Congress.

See Rec., p. 4.

The bill sets forth the several fraudulent conveyances concocted to give a title to the defendants, (see Rec., p. 4,) and also the various acts of omission and commission by said defendants, showing their guilty knowledge of the forgery and their conspiracy to defraud De la Vega.

See Rec., pp. 5 and 6.

The bill prays for answers from the defendants as to the matters set forth, (see Rec., pp. 8 to 10,) and that the court may decree the title to said tract to be freed from all clouds put upon it by the defendants; that plaintiff be quieted in his title to the said tract, and that the forged *testimonio* be decreed to be delivered up to be cancelled; that an injunction be issued to keep things in position during the pendency of the suit, and for process of subpœna against the defendants.

See Rec., p. 10.

An appearance was entered on the 1st June, 1868, for certain defendants, viz: E. J. Gurley, J. M. Norris, W. R.

Kellum, Westley Plattenberg, THOMAS J. FROW, Thomas Harrison, J. B. Earle, J. L. L. McCall, John C. Watrous.

See Rec., p. 14.

On the 19th June, 1868, these defendants were allowed until the first Monday in the following August to answer.

See Rec., p. 15.

On the 4th August, 1868, four of these defendants, viz., John W. Lopsley, John C. Watrous, THOMAS J. FROW, and Westley Plattenberg, were allowed until rule day of September following to file their answers.

See Rec., p. 17.

On September 7, 1868, the plaintiff had an order taking his bill *pro confesso* against S. H. Renick, THOMAS J. FROW, and Westley Plattenberg.

See Rec., p. 17.

On November 2, 1868, complainant moves that the orders and decrees taking the bill *pro confesso* against the defendants THOMAS J. FROW, Westley Plattenberg, and S. H. Renick, be ordered to be made absolute at the rule day in next December.

See Rec., p. 17.

On December 7, 1868, THOMAS J. FROW files his motion to postpone the hearing of plaintiff's motion to make absolute the order *pro confesso* against him until the rule day in January next.

See Rec., p. 18.

On the same day the plaintiff moved for attachments against the defendants and to make the *pro confesso* absolute; which motion was set for hearing on the first Monday of January, 1870.

See Rec., pp. 19 and 20.

On February 7, 1870, a decree was entered making absolute the *pro confesso* against THOMAS J. FROW.

See Rec., p. 22.

On the 16th February, 1870, the defendant, THOMAS J. FROW, moves to set aside the order of 7th February, 1870, ordering the judgment *pro confesso* taken against him on the 7th February, 1868, to be made absolute, on various grounds.

See Rec., pp. 22 and 23.

On the 18th March, 1870, the court set aside the foregoing motion, and refused to open or disturb the decree against THOMAS J. FROW.

See Rec., p. 67.

Some objections to the form of the decree were made, heard, and overruled.

See Rec., pp. 68 to 73.

And final decree was entered making absolute the *pro confesso* ordering the bill of complaint to be taken as true as to him, THOMAS J. FROW, and the prayer of the bill in all things granted as between the complainant and said Frow, &c.

See Rec., p. 74.

Frow gave notice of appeal on 23d March, 1870, (see Rec., p. 74,) and the appeal was made returnable to the December term, 1870.

It will have been seen by what precedes that everything was done in the cause according to the rule 18 in Equity prescribed by this court, and that the appellant has no legal ground of complaint against the decree.

It is therefore respectfully submitted that the decree of the circuit court appealed from should be affirmed.

Respectfully submitted.

THOMAS J. DURANT,
Of Counsel for Appellee.